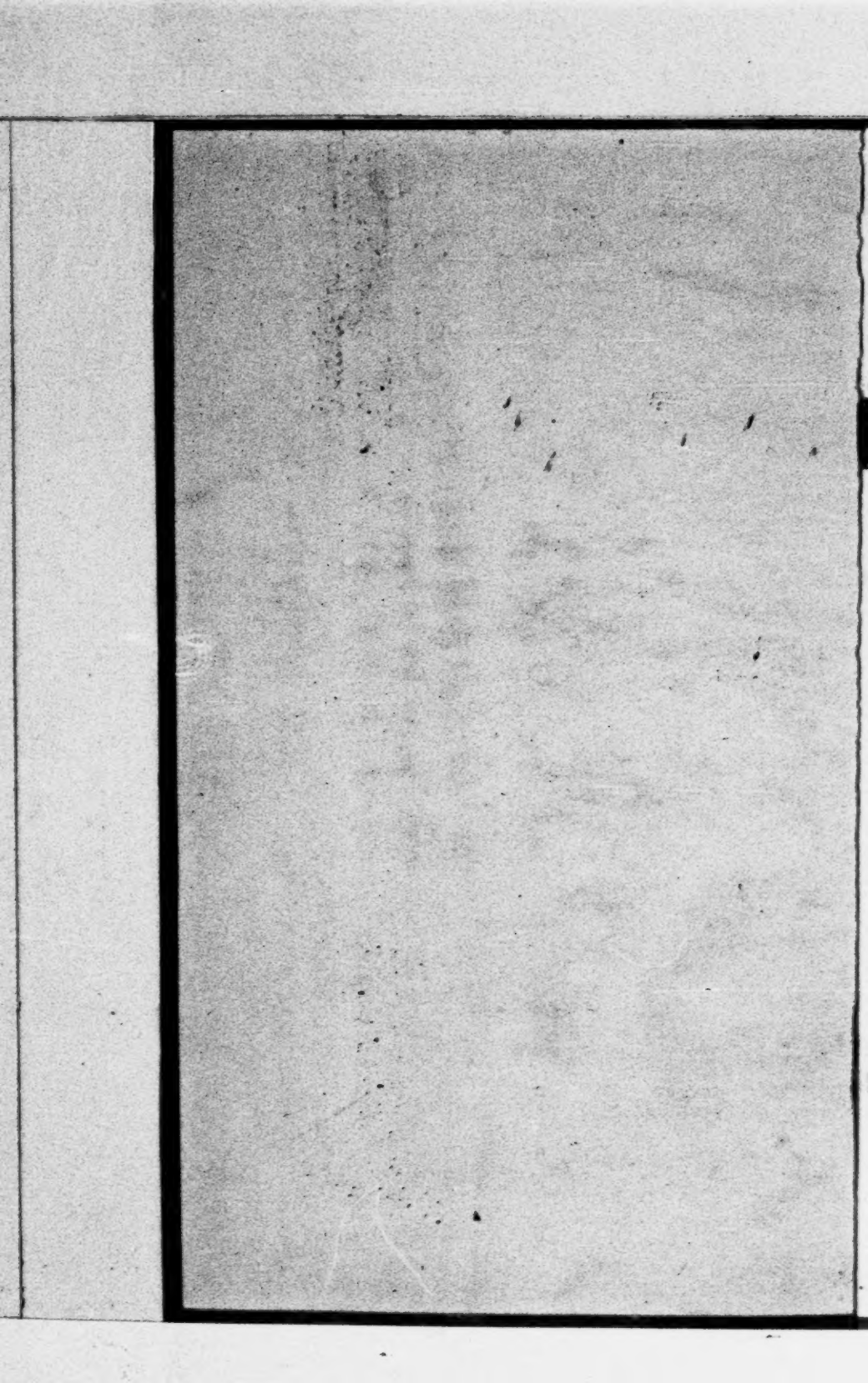

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-299

MESA OIL COMPANY, an Arizona corporation,
Petitioner,

v.

BUSINESS MEN'S ASSURANCE COMPANY OF AMERICA, a Missouri corporation,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LEWIS AND ROCA
By John P. Frank
Douglas L. Irish
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Phoenix, Arizona 85003
Counsel for Respondent

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OPINIONS BELOW

The opinions are correctly set forth in the petition; the Ninth Circuit opinion is reported at 476 F.2d 491.

JURISDICTION

This Court has no jurisdiction. The opinion in question was decided on March 6, 1973, and rehearing was denied on May 9. Ninety days from May 9 is August 7. This brief was not mailed to the Clerk (we do not know when it was filed) until August 8, and this Court has no jurisdiction; Rule 22;

Stern & Gressman, Supreme Court Practice 239 (4th ed.). An application for extension of time was apparently late; in any case, it was not signed within the ninety days.

STATEMENT OF THE CASE

This is an accidental death claim on an insurance policy. Deceased ingested a given drug with alcohol, the combination of which killed him. Death from "poison or drug" was excluded from the policy.

The district court gave summary judgment for the defendant. The Court of Appeals affirmed, two to one, the dissenting judge believing that Arizona law required a different result.

QUESTIONS PRESENTED

1. Whether the petition is out of time.

2. Whether Arizona law was correctly applied in interpreting an insurance policy.

REASONS FOR DENYING THE WRIT

In addition to being out of time, this petition raises no question which even purports to be important and there is not a hint of conflict. We have merely a legitimate dispute over an arguable point of Arizona law, as to which this Court could make no significant contribution. The certiorari jurisdiction does not exist "merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Import Co. v. Coty*, 262 U.S. 159, 163, 43 S. Ct. 531, 67 L. Ed. 922 (1923).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,
LEWIS AND ROCA

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August, 1973.